

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LINN H. CARLETON, D.O. : CIVIL ACTION
:
v. :
:
PHYSICIAN'S HEALTH PLAN OF :
MARYLAND, INC., ET AL. : NO. 03-1233

MEMORANDUM

Padova, J.

April 17, 2003

Plaintiff Linn H. Carleton, D.O. originally filed the instant suit in the Philadelphia County Court of Common Pleas against Defendants Physician's Health Plan of Maryland, Inc., d/b/a MAMSI Health Plans/Provider Networks Division and MAMSI Insurance Resources, LLC and Alliance PPO, LLC and MAMSI Life and Health Insurance Company and MD Individual Practice Association, Inc.; Optimum Choice, Inc. of Pennsylvania; and Alliance PPO, Inc. Defendants removed to this Court on February 27, 2003. The Notice of Removal alleges that this Court has federal question jurisdiction over this action pursuant to 28 U.S.C. § 1441 because this action is based on federal law.¹ Before the Court is Plaintiffs' Motion to Remand. For the reasons which follow, the Motion is granted.

I. BACKGROUND

Plaintiff is an osteopathic physician with a practice in Philadelphia. (Compl. ¶ 1.) Defendants Physician's Health Plan of

¹No diversity jurisdiction over this case exists because Plaintiff and two Defendants are alleged to be Pennsylvania residents. (Compl. ¶¶ 1, 3, and 4.)

Maryland, Inc., d/b/a MAMSI Health Plans/Provider Networks Division and MAMSI Insurance Resources, LLC and Alliance PPO, LLC and MAMSI Life and Health Insurance Company and MD Individual Practice Association, Inc. are HMOs, some or all of which operate in Philadelphia. (Compl. ¶ 2.) Defendant Optimum Choice, Inc. of Pennsylvania is a Pennsylvania corporation or business entity and HMO with its principal place of business in Lansdale, Pennsylvania. (Compl. ¶ 3.) Defendant Alliance PPO, Inc. is a Pennsylvania corporation or business entity with its principal place of business in Lancaster, Pennsylvania. (Compl. ¶ 4.)

Plaintiff has been a physician for 25 years with a good reputation. (Compl. ¶ 8.) During 2001, Plaintiff had a business relationship with Defendants' HMO which referred one patient to Plaintiff prior to December 2001. (Compl. ¶¶ 9-10.) In late August or early September 2001, Defendants' representatives performed a site survey of Plaintiff's business. (Compl. ¶ 11.) After the site survey, Defendants advised Plaintiff of alleged deficiencies in Plaintiff's practice and demanded corrective action. (Compl. ¶ 12.) In November 2001, Plaintiff spoke with Defendants' representatives and informed them that he disagreed with the alleged deficiencies and desired to terminate his business relationship with Defendants' HMO. (Compl. ¶ 13.) Defendants accepted Plaintiff's termination. (Compl. ¶ 14.)

On January 14, 2002, Plaintiff learned that Defendants had filed an adverse action report with the Healthcare Integrity and Protection Data Bank ("HIPDB"), a national data collection program for reporting and disclosure of certain final adverse actions taken against health care practitioners, providers and suppliers. (Compl. ¶¶ 15-16.) The information reported by Defendants to the HIPDB was false and defamatory and Defendants knew that to be the case. (Compl. ¶ 17.) Plaintiff asked Defendants to file a correction to their report with the HIPDB, voiding the report, but Defendants have not done so. (Compl. ¶ 18.) Plaintiff has filed a clarifying statement with the HIPDB and requested Secretarial review of the adverse action report, to correct the false information reported by Defendants. (Compl. ¶¶ 19-20.)

The Complaint asserts a claim for defamation pursuant to Pennsylvania law, alleging that the statements communicated and published by Defendants to the HIPDB are not privileged and were defamatory. (Compl. ¶ 22.) The Complaint seeks monetary damages and injunctive relief in the form of an order requiring Defendants to file a correction to their report with the HIPDB. (Compl. Counts I and II.) Defendants' Notice of Removal alleges that this Court has federal question jurisdiction over this action pursuant to 28 U.S.C. § 1441 because this action is based on the provisions of the Social Security Act which established the HIPDB, 42 U.S.C.

§ 1320a-7e, and its implementing regulations, 45 C.F.R. §§ 61.01-61.16.

II. STANDARD OF REVIEW

Plaintiff has moved to remand this action to the Philadelphia County Court of Common Pleas pursuant to 28 U.S.C. § 1447(c).² "Removability is determined from a plaintiff's pleadings at the time of removal." Phillips v. Selig, 157 F. Supp. 2d 419, 424 (E.D. Pa. 2001) (citations omitted). A defendant may remove a civil action to federal court only if the federal court would have had original jurisdiction to hear the matter. Id. at 125 (citations omitted). "The defendant bears the burden of establishing removal jurisdiction and compliance with all pertinent procedural requirements." Id. (citation omitted). The Court may remand a case back to the state court after removal if the removal was procedurally defective or if subject matter jurisdiction is lacking. 28 U.S.C. § 1447(c) (1994). "All doubts should be resolved in favor of remand." Phillips, 157 F. Supp. at 125 (citation omitted).

III. DISCUSSION

Plaintiff argues that this case should be remanded to state court because his claim arises under state law and not the Social Security Act, and, therefore, this Court does not have subject

²Plaintiff's Motion for Remand included a request for payment of his costs incurred as a result of Defendants' improper removal. Plaintiff's counsel has notified the Court that Plaintiff has withdrawn his request for an award of his costs.

matter jurisdiction over this action. "Only state-court actions that originally could have been filed in federal court may be removed to federal court by the defendant." Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987). Since Plaintiff and two of Defendants are citizens of the Commonwealth of Pennsylvania, federal question jurisdiction is required. See id. The existence of federal-question jurisdiction is governed by the "well-pleaded complaint rule," which means that "federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint. The rule makes the plaintiff the master of the claim; he or she may avoid federal jurisdiction by exclusive reliance on state law." Id. Moreover, "a case may not be removed to federal court on the basis of a federal defense, including the defense of pre-emption, even if the defense is anticipated in the plaintiff's complaint, and even if both parties concede that the federal defense is the only question truly at issue." Id. at 393 (emphasis in original) (citation omitted).

The Complaint asserts a defamation claim pursuant to Pennsylvania law. Neither party has brought to the Court's attention any authority interpreting 42 U.S.C. § 1320a-7e, or the regulations governing reporting to the HIPDB, 45 C.F.R. §§ 61.1-61.16, to either create a federal cause of action related to reports filed with HIPDB or to preempt state law causes of action related to reports filed with the HIPDB. This appears to be an

issue of first impression with this Court. The Court, therefore, looks to the language of the statute and the regulations. "When construing a statute, the Court begins with the plain language of the statute, which controls unless literal application of the statute produces a result which is irreconcilable with the purpose of the statute. See United States v. Ron Pair Enterprises, Inc., 489 U.S. 235, 242 (1989).

A close examination of the clear language of 42 U.S.C. § 1320a-7e and the regulations implementing the HIPDB, 45 C.F.R. §§ 61.1-61.16, has not revealed either the creation of a federal cause of action regarding the contents of reports made to the HIPDB or an intent to preempt state law causes of action regarding the contents of reports made to the HIPDB. Indeed, the regulations implementing the HIPDB anticipate that civil actions will be brought by the subjects of reports filed with the HIPDB regarding the contents of those reports because they provide an immunity defense in some cases: "[i]ndividuals, entities or their authorized agents and the HIPDB shall not be held liable in any civil action filed by the subject of a report unless the individual, entity or authorized agent submitting the report has actual knowledge of the falsity of the information contained in the report." 45 C.F.R. § 61.16. As neither 42 U.S.C. § 1320a-7e nor its implementing regulations creates a federal cause of action regarding the contents of reports made to the HIPDB, the Court concludes that the Complaint does not

assert a federal question and this Court lacks subject matter jurisdiction over this action.

Defendants argue that, if this case were remanded, Plaintiff's request for an injunction would result in a state court attempting to enjoin the HIPDB, a federal agency. Defendants maintain that such an injunction would invoke the Supremacy Clause of the United States Constitution and thereby justify the exercise of federal jurisdiction in this case. However, the Complaint does not seek an injunction of the HIPDB, it asks for an order requiring Defendants to file a correction to the report they filed with the HIPDB. The Supremacy Clause of the United States Constitution does not, therefore, support the exercise of federal jurisdiction over this action. The Motion to Remand is, accordingly, granted.

An appropriate order follows.

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O R D E R

AND NOW, this 17th day of April, 2003, upon consideration of Plaintiff's Motion to Remand (Docket No. 5) and Defendants' response thereto, **IT IS HEREBY ORDERED** that the Motion is **GRANTED**. The above-captioned case shall be **REMANDED** to the Court of Common Pleas for Philadelphia County. All pending Motions are hereby **DISMISSED** as moot.

BY THE COURT:

John R. Padova, J.